

P-401/CP-89-951; P-421/CP-87-352; P-407,421/CP-87-216 ORDER  
DENYING PETITIONS FOR RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Cynthia A. Kitlinski  
Dee Knaak  
Norma McKanna

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Petition for  
Extended Area Service From the  
Hokah Exchange to the La Crosse,  
Wisconsin Calling Area

ISSUE DATE: January 29, 1992

DOCKET NO. P-401/CP-89-951

In the Matter of the Petition of  
Certain Subscribers in the  
Northfield Exchange for Extended  
Areas Service to the  
Minneapolis/St. Paul  
Metropolitan Calling Area

DOCKET NO. P-421/CP-87-352

In the Matter of the Petition of  
Certain Subscribers in the  
Cannon Falls Exchange for  
Extended Areas Service to the  
Minneapolis/St. Paul  
Metropolitan Calling Area

DOCKET NO. P-407,421/CP-87-216

ORDER DENYING PETITIONS FOR  
RECONSIDERATION

**PROCEDURAL HISTORY**

On November 21, 1991, the Commission issued its ORDER DETERMINING THE STATUS OF INTEREXCHANGE CARRIERS UNDER MINN. STAT. § 237.161, SUBD. 3 (B) (1990). In this Order, the Commission found that interexchange carriers (IXCs) carrying interLATA traffic and/or intraLATA traffic are not "affected telephone companies" as that term is used in the extended area service (EAS) statute, Minn. Stat. § 237.161 (1990). Instead, the Commission found that the term refers solely to the local exchange companies (LECs) that serve the petitioning and petitioned exchanges.

On December 2, 1991, the Department of Public Service (the Department) filed a petition for reconsideration of that Order.

On December 11, 1991, MCI Telecommunications Corporation and Teleconnect Long Distance Services and Systems (the MCI Companies) filed its petition for reconsideration.

On December 12, 1991, AT&T Communications of the Midwest, Inc. (AT&T) filed a reply to the Department's petition.

On December 12, 1991, U S West Communications, Inc. (USWC) filed a request for clarification and its reply to the Department's petition.

On December 23, 1991, United Telephone System - Midwest Group (United) filed a request for clarification and direction.

On January 2, 1991, Vista Telephone Company (Vista) filed a request for clarification.

On January 6, requests for clarification were filed by GTE of Minnesota, Inc. (GTE Minnesota), Eckles Telephone Company (Eckles) and Scott Rice Telephone Company (Scott Rice).

On January 14, 1991, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **The Department's Petition for Reconsideration**

In its petition, the Department reiterated the belief it expressed prior to the Commission's Order in this matter, that IXCs that receive toll revenue, incur transport costs, or pay access charges on proposed EAS routes are "affected telephone companies" as that term appears in the EAS statute. The Department again argued that the unambiguous meaning of "affected" applies to a telephone company whose revenues, income stream, toll routes and market share are affected, i.e. to IXCs that carry toll traffic along proposed EAS routes.

The Department's argument is not new. It was examined and rejected in the Commission's November 21, 1991 Order and is rejected once more. A statute is not to be understood by applying a dictionary definition of a single word, as the Department does with the word "affected", but must be understood by reference to the entire statute. Once the entire statute is read, it is clear and unambiguous that the phrase "affected telephone company" appearing in subdivision 3 (b) of that statute does not include IXCs but only refers to local exchange companies (LECs) that serve the petitioned and petitioning exchanges. Accordingly, the Department's petition for reconsideration will be denied.

### **Petition of MCI Companies**

The MCI Companies argued that the Commission's Order was erroneous for eight reasons:

First, MCI asserted that the plain meaning of "affected" included IXCs. As previously indicated, this conclusion stems from an improper application of the "plain meaning" approach to understanding the statute.

Second, MCI argued that the legislative history supports its interpretation. However, legislative history is relevant only where a statute is ambiguous. Here, the statute is not

ambiguous. Legislative history is properly used to resolve ambiguity, not create it.

Third, MCI alleged that the Commission ignored the Legislature's careful use of different language within Subd. 3 (b) and disregards the legislative definition of "telephone company" set forth in Minn. Stat. § 237.01, subd. 2. To the contrary, the Commission carefully examined the statute as a whole and found that MCI's position is not supportable.

Fourth, MCI stated that the Order erroneously assumes that the Legislature overlooked, or was indifferent to, the obvious impact of EAS on IXCs. The Commission assumed nothing of the kind and found the Legislature's intention solely in the language of the statute.

Fifth, MCI asserted that the Commission's interpretation is erroneous because it violates the just compensation and due process provisions of the 5th Amendment to the United States Constitution and Article I, § 13 of the Minnesota Constitution. In essence, MCI asserted a property right to provide telecommunications services across a state or LATA boundary and further asserted that the Commission took that property unconstitutionally. The Commission is generally reluctant to address broadly asserted constitutional claims raised for the first time on reconsideration. However, in this case, it is clear that MCI's claims are without merit. MCI has no constitutionally protected right to the status quo.

Sixth, MCI alleged that the Commission mistakenly assumed that the costs upon which EAS rates must be based do not include the cost of maintaining the income neutrality of IXCs. On the contrary, the Commission did not assume this, but reached this conclusion based on a thorough examination of the entire statute. MCI noted that in order for the statute to function as an integrated whole, it must be assumed that *the costs resulting from subdivision 3 (b)* are included within the "specific additional cost incurred" referred to in subdivision 2. This observation, while true, does not advance MCI's argument because it does not provide any basis for MCI's desired conclusion, i.e. that IXC costs are "costs resulting from subdivision 3". In sum, MCI's unwarranted assumption led it to circular reasoning that the Commission does not adopt.

Seventh, MCI alleged that in determining the meaning of the term "affected telephone company" the Order gave inappropriate weight to concerns for administrative convenience. This is not the case. The Order makes it quite clear that the Commission took the text of the statute as the primary indicator of legislative intent. After carefully examining and rejecting the statutory construction arguments of the Department and MCI, the Commission properly expressed the practical implications of the interpretation advocated by those parties.

Eighth, MCI argued that the statutory injunction that the Commission "consider the interests of all parties" when determining a fair and equitable EAS rate requires on-going compensation to the IXCs. The Commission does not accept that view. General language about considering interests does not mandate specific results of that consideration.

### **Petitions for Clarification**

The petitioners for clarification (USWC, United, Vista, GTE Minnesota, Eckles, and Scott Rice) asked whether they should file new cost studies and proposed rates based on traffic studies currently available or whether new traffic information should be used. If new information is required, the petitioners requested that the Commission order the IXCs to provide wire-center to wire center traffic information for the EAS routes at issue.

Sound traffic studies are the basis for reliable cost studies and proposed rates. Because these petitions involve the first interLATA EAS petitions to be considered by the Commission under the 1990 EAS statute, particular care will be exercised before proceeding. To assure the best traffic studies possible, the Commission will direct the LECs serving the petitioned and petitioning exchanges and the interLATA IXCs serving those exchanges to confer with the Department to generate alternative methods of developing a reliable and uniform traffic study methodology that can be used by the LECs in developing their cost studies and proposed rates for the pending interLATA EAS petitions.

The conferees should also review these methods for possible application to intraLATA EAS routes in the post-intraLATA equal access environment and specifically address whether a method can be developed that does not rely on information from IXCs. If the methodology agreed upon requires the filing of information by IXCs, the parties should address how the Commission can ensure that all IXCs carrying toll traffic over a proposed EAS route file their traffic information in a timely fashion.

The Commission will require the conferees to report on these meetings within 45 days of this Order.

### **ORDER**

1. The petitions for reconsideration of the Commission's November 21, 1991 Order in this matter filed by the Minnesota Department of Public Service and MCI Telecommunications Corporation and Teleconnect Long Distance Services and Systems Company are denied.
2. Within 45 days of this Order:

- a. the LECs serving the petitioned and petitioning exchanges and the interLATA IXCs serving those exchanges shall meet with the Department to
    1. generate alternative methods of developing a reliable and uniform traffic study methodology that can be used by the LECs in developing their cost studies and proposed rates for the pending interLATA EAS petitions;
    2. review these alternative methods for possible application to intraLATA EAS routes in the post-intraLATA equal access environment;
    3. address whether a method can be developed that does not rely on information from IXCs; and
    4. if the methodology agreed upon requires the filing of information by IXCs, address how the Commission can ensure that all IXCs carrying toll traffic over a proposed EAS route file their traffic information in a timely fashion; and
  - b. the LECs, the IXCs and the Department shall file a report the results of these meetings.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)